IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEVE WEINBERG	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**CIVIL ACTION NO. 3:06-CV-2332-B**
NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, RICHARD BERTHELSEN, GENE UPSHAW, TOM DEPASO, TRACE ARMSTRONG, ROGER KAPLAN, JOHN COLLINS, KEITH WASHINGTON, TONY AGNONE, HOWARD SHATSKY, and MARK LEVIN	§	**ECF**
	§	
Defendants.	§	
	§	

REPLY OF ROGER KAPLAN

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TABLE OF CONTENTS

I. Weinberg's Response 2

II. There is no general jurisdiction over Kaplan 6

III. The courts of Texas do not have jurisdiction over Kaplan because of an alleged Conspiracy 8

  A. Allegations of the existence of a conspiracy will not confer specific jurisdiction over a non-resident 8

  B. Weinberg's attack on the 2003 arbitration award 11

  C. Kaplan's failure to enforce his subpoena 11

  D. There is no evidence of a conspiracy 11

TABLE OF AUTHORITIES

FEDERAL CASES

Bensusan Rest. v. King, 126 F.3d 25, 28-29 (2d. Cir. 1997) 11

In re Arthur Treacher's Franchisee Litigation, 92 F.R.D. 398 (E.D. Pa. 1981)..............................9

Cherokee Labs., Inc., v. Rotary Drilling Servs., Inc., 383 F.2d 97 (5th Cir. 1967), *cert. denied,* 390 U.S. 904, 88, S.Ct. 816, 19 L.Ed.2d 870 (1968) 10

Helicoptores, 466 U.S. at 418...8

Rush v. Savchuk, 444 U.S. 320, 100 S.Ct. 571, 62 L.Ed.2d 516 (1980)..9

Textor, 711 F.2d at 1392 (quoting *Gemini*, 470 F.Supp. at 564)..9

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980))...9

STATE CASES

Double Eagle Resorts, Inc. v. Mott, ____ S.W.3d _____ (Tex. App. —Beaumont 2007).............7

Experimental Aircraft Association, Inc. v. Dopter, 76 S.W.3d 496 (Tex. App. —Houston [14th Dist.] 2002)...13

International Elevator Company v. Garcia, 76 S.W.3d 778 (Tex. App. —Houston [1st Dist.] 2002) 11, 12

Massey v. Armco Steel Co., 652 S.W.2d 932 (Tex. 1980)..10

Michel v. Rocket Engineering Corp., 45 S.W.3d 658 (Tex. App. —Ft. Worth 2001) 10, 13, 14

National Industrial Sand Association v. Gibson, 897 S.W.2d 769 (Tex. 1995)............................8

Vosko v. Chase Manhattan Bank, N.A., 909 S.W.2d 95 (Tex. App. —Houston [14 Dist.] 1995) 6, 7, 10

Woods & Associates v. Oglesby...4

FEDERAL STATUTES

Federal Arbitration Act, 9 U.S.C. § 1, *et seq*..11

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	§	
Defendants.	§	
	§	

REPLY OF ROGER KAPLAN

By the simple expediency of attaching twelve-(12) year old correspondence and eight (8) form letters to his Declaration and claiming that the Defendant National Football League Players Association (NFLPA) and several of the individual defendants dragged Roger P. Kaplan into a conspiracy (Response, p. 4, fn. 6), Plaintiff Weinberg ("Weinberg") urges this Court to deny the Motion to Dismiss for lack of personal jurisdiction of an individual who does not live in Texas, committed no tort in Texas, does not practice law in Texas, is not licensed to practice law in Texas, has no registered agent in Texas, and seldom comes to Texas for any purpose (see Affidavit of Roger P. Kaplan, on file (Kaplan's App. 2-4). Weinberg offers no proof of the existence of any conspiracy, that Kaplan was a part of any alleged conspiracy, or that Kaplan had any contact with the state of Texas that would make him amenable to process in this state, apart from constructive contact with Texas through his purported involvement in the alleged conspiracy. Accordingly, the motion to dismiss for lack of jurisdiction should be granted.

This Reply is supported by the Supplemental Affidavit of Roger P. Kaplan and attachments thereto which are incorporated in this Reply for all purposes. (Kaplan's App. 52-80).

I. Weinberg's Response

Weinberg's Response details Kaplan's contacts with Texas and alleged involvement in a purported conspiracy as follows:

a. Kaplan refused to schedule Weinberg's grievances for hearing, and was thus dragged into the conspiracy. (Response, ¶ 9, p. 3; p. 4 fn. 6).

b. Kaplan ruled against Weinberg in his emergency appeal to stay the immediate revocation of his status as a Contract Advisor. (Response, ¶ 11, p. 5).

c. Keith Washington, a Texas resident, submitted a false letter triggering an additional disciplinary complaint against Weinberg. (Response, ¶ 13, p. 5).

d. Kaplan prevented a hearing on the new disciplinary charge against Weinberg by refusing to enforce a subpoena. (Response, ¶ 14, p. 6).

e. Kaplan ignored Weinberg's request for hearing and threatened to dismiss his cases. (Response, ¶ 15, p. 6).

f. Kaplan sent letters and other correspondence to Weinberg in Texas relating to the grievances and disciplinary complaints filed against Weinberg. (Response, ¶ 17, p. 7).

g. Other conspirators committed overt acts in Texas, for which Kaplan is liable by virtue of his participation in the conspiracy. (Response, ¶ 18, p. 7).

On the basis of these allegations, Weinberg argues:

a. Kaplan conspired with Texas residents and others, to commit an intentional tort in Texas. (Response, ¶ 31, p. 11).

b. The conspirators made representations in Texas which Weinberg relied on in Texas, which is sufficient to satisfy the demands of due process. (Response ¶ 37, p. 14).

c. Kaplan personally sent numerous communications to Weinberg in Texas. (Response, ¶ 37, p. 14).

d. The acts of the other conspirators may be imputed to Kaplan, as a member of a conspiracy. (Response, ¶ 38, p. 15).

e. It would not be unfair to require Kaplan to defend the suit in Texas because Kaplan has traveled to Texas in the past, and even scheduled grievance hearings in Texas. (Response, ¶ 40, p. 16).

f. "Furthermore, there is no reason to believe that he would be required to travel to Texas much in connection with the lawsuit anyway." (Response, ¶ 40, p. 16).

Weinberg's Response is supported by his Declaration to which is attached a series of letters and other documents relating to Kaplan's contacts with the state of Texas and Kaplan's alleged role in a conspiracy which, Weinberg claims, are sufficient to assert general and specific jurisdiction over him in this case. The exhibits are unpersuasive:

1. The first series of exhibits (Plaintiff's App. 6 through 17) deal with *Woods & Associates v. Oglesby*, a grievance which was resolved in 1995, and, Weinberg admits, was the only grievance Weinberg was involved in that Kaplan scheduled for hearing in Texas (Plaintiff's App. 2). Even assuming, without admitting, that Kaplan's presence in Texas for the purpose of hearing the *Oglesby* grievance would have temporarily conferred jurisdiction over Kaplan for purposes of his role in that grievance, there is no law and no logic to suggest that miscellaneous correspondence and a single trip to Texas in 1995 dealing with a discrete issue satisfy the requirements of due process that would make Kaplan amenable to process in the courts of the state of Texas in 2007 on wholly unrelated matters.

2. The second group of documents attached to Weinberg's Declaration, far from confirming the existence of a conspiracy of which Kaplan was a part, establish just the opposite. Plaintiff's App. 19 relates to Kaplan's attempts to schedule a grievance hearing in the dispute between Weinberg and Howard Silber. As Kaplan states in his Supplemental Affidavit, although both parties received his letter requiring that each forward a $3,000.00 deposit to cover the costs of the hearing, he never received the deposit from either of them, and, accordingly, never scheduled the arbitration for hearing (Kaplan's App. 54). Moreover, Kaplan was advised by Weinberg's attorney, Michael Kirshon, not to schedule the grievance for hearing because the parties were attempting to settle the dispute (Kaplan's App. 54).

3. The letters included as Plaintiff's App. 21 through 29 refute any notion that Kaplan was part of a conspiracy or that he was refusing to schedule grievances for hearing. The first paragraph of Plaintiff's App. 21 states that in response to a request from Weinberg, Kaplan sent him an e-mail that he had docketed two (2) cases against Howard Silber, in addition to a third grievance which was scheduled for hearing before arbitrator Kaplan in Charlotte, North

Carolina. Plaintiff's App. 21 goes on to state that NFLPA never sent ten (10) grievances to Kaplan, but that Kaplan had sent a letter relating to the two (2) grievances he had received advising the parties to contact him so that he could schedule a hearing. The letter of September 28, 2004 (Plaintiff's App. 21-22), concludes with a request that appropriate correspondence be sent to Kaplan so that he could docket those cases for hearing.

4. Plaintiff's App. 23, a letter dated October 1, 2004, reaffirms that arbitrator Kaplan had not received appropriate documentation from NFLPA to schedule grievances. It also attaches two (2) pieces of correspondence from Kaplan to Erron Kinney and Sean McDermott (neither of whom resides in Texas), in which arbitrator Kaplan advised these players that their grievances would be dismissed if they did not respond to his previous correspondence regarding their desires for a hearing (Plaintiff's App. 24, 25). As Kaplan's Supplemental Affidavit states, neither of these players scheduled a hearing on the grievance he had filed against Howard Silber, and both of the grievances were dismissed (Kaplan's App. 56).

5. Plaintiff's App. 26, a letter dated October 12, 2004, to Tom DePaso in the NFLPA legal department, again questions why only three (3) of thirteen (13) grievances filed by NFL players against Howard Silber had been forwarded to Kaplan for hearing. By letter of October 13, 2004 (Plaintiff's App. 27), DePaso responded to Weinberg's request for information by stating that since Weinberg was not counsel of record for the players, he was not entitled to the documentation requested.

6. Weinberg's response to DePaso's October 13, 2004, letter is attached as Plaintiff's App. 28. Far from suggesting that Kaplan is part of some sort of conspiracy, Weinberg's letter, dated October 20, 2004, unequivocally commends Kaplan for being cooperative:

> "As you are also aware, the NFLPA Arbitrator, Roger Kaplan, has provided me not only with a complete list of the players he wrote to recently (regarding similar dismissals), but Arbitrator Kaplan has also provided me with copies of the actual letters he has sent to these players so I could then discuss them with my ex-clients (prior to their dismissal)." (Plaintiff's App. 28)

7. The final group of letters attached to Weinberg's Declaration (Plaintiff's App. 31-38) is correspondence sent to Weinberg and various players he had disputes with. There is nothing in Weinberg's Declaration to suggest that a request was ever made to schedule the grievances for hearing, and there is no claim made that Kaplan refused to schedule any of those grievances for hearing, if a request had been made. As Kaplan explains in his Supplemental Affidavit, these are form letters he sends out to schedule hearings when grievances are referred to him (Kaplan's App. 56).

II. There is no general jurisdiction over Kaplan

The State of Texas does not have general jurisdiction over Roger Kaplan.

> "General jurisdiction is present where the defendant has had continuous and systematic contacts with Texas, even if the cause of action did not arise from the defendant's purposeful conduct in the state." *Vosko v. Chase Manhattan Bank, N.A.*, 909 S.W.2d 95, 98 (Tex. App. — Houston [14 Dist.] 1995).

As Kaplan stated in his original affidavit on file herein (Kaplan's App. 2-4), he has, on occasion, sat as an arbitrator in Texas for the convenience of the parties (Kaplan's App. 3). However, it is his recollection that he has been in the state of Texas no more than three (3) times in the past five (5) years. (Kaplan's App. 4). These statements are not refuted by Weinberg. Instead, in support of his claim that the Courts of Texas have general jurisdiction over Kaplan, Weinberg refers to correspondence involving a 1995 arbitration scheduled for hearing in Texas, but which was resolved prior to hearing (Kaplan's App. 54). Aside from that, Weinberg relies on a series of form letters written by Kaplan in 2004 to Weinberg and others requesting that the parties contact him regarding the scheduling of arbitrations for hearing (Plaintiff's App. 31-38). There is no evidence presented by Weinberg to suggest that any of the hearings referenced in that correspondence (Plaintiff's App. 31 through 38) would have been scheduled in Texas, and there is no evidence presented that any of these grievances were actually heard. Finally, none of the grievances referenced in Plaintiff's App. 31 through 38 relate to any of the claims put forward in Weinberg's First Amended Petition or his Response to Kaplan's Motion to Dismiss. The Court, thus, is presented with a claim that general jurisdiction should attach because first, Kaplan traveled to Texas in 1995 (twelve (12) years ago)), and, second, in the course of performing his duties as an arbitrator, sends out routine correspondence to parties and counsel requesting dates for the scheduling of arbitrations for hearing. The 1995 incident is too remote in time to confer jurisdiction over Kaplan by Texas, and the occasional correspondence requesting that parties contact him regarding the scheduling of hearings is insufficient, as a matter of law, to permit the assertion of general jurisdiction over Kaplan by the courts of this state because these letters do not demonstrate that Kaplan had "continuous and systematic contacts with Texas." *Vosko, supra* at p. 98.

In *Double Eagle Resorts, Inc. v. Mott,* ____ S.W.3d _____ (Tex. App. — Beaumont 2007) (copy attached) the Court held that a Colorado resort's operation of a website which accepted reservations from Texas residents did not constitute sufficient contact with the State of Texas to confer general jurisdiction over that resort. In holding that this was not sufficient to confer general jurisdiction, the Court stated:

> "The record in this case establishes that: (1) Double Eagle is a resident of Colorado; (2) operates its hotel in Colorado; (3) has no employees in Texas; (4) has no office, registered agent, or property in Texas; and (5) is not authorized to do business in Texas. . . The mere fact that a website permits customers to make reservations

> does not show continuous and systematic contacts between Double Eagle and Texas. . .
>
> As the court noted in *Helicopteros*, 'Mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of *in personam* jurisdiction over a non-resident corporation in a cause of action not related to those purchase transactions.' *Helicoptores,* 466 U.S. at 418. "[S]tream-of-commerce jurisdiction requires a stream, not a dribble, *Michiana,* 168 S.W.3d at 786. In this case, Double Eagle's economic activity related to Texas is less frequent and less continuous than that shown in *Helicoptores.*" *Id.* at p. 5.

If regularly soliciting business through an interactive website is not sufficient to confer general jurisdiction over a non-resident, certainly the occasional sending of form letters to parties to arbitrations (which may or may not be scheduled for hearing in Texas) is not sufficient forum contact to confer general jurisdiction over a non-resident. Kaplan does not have sufficient minimum contacts with the state of Texas to confer general jurisdiction over him for purposes of adjudicating the causes of action alleged by Weinberg in his First Amended Petition.

III. The courts of Texas do not have jurisdiction over Kaplan because of an alleged conspiracy

A. Allegations of the existence of a conspiracy will not confer specific jurisdiction over a non-resident

Weinberg's other basis for claiming that the courts of Texas have jurisdiction over Kaplan is specific jurisdiction arising out of Kaplan's participation in a conspiracy to cause injury to Weinberg. The Texas Supreme Court has held that participation in a conspiracy is not, in and of itself, sufficient to confer jurisdiction over a non-resident defendant. In *National Industrial Sand Association v. Gibson*, 897 S.W.2d 769, 773 (Tex. 1995), the Supreme Court stated:

> The sole theory of liability the plaintiffs assert against NISA is civil conspiracy, and they assert conspiracy as a basis for long-arm jurisdiction. Some courts have recognized civil conspiracy as a separate basis to support the exercise of jurisdiction.

The exercise of long-arm jurisdiction based on conspiracy rests on the concept that acts of conspirators in furtherance of the conspiracy are attributable to co-conspirators. *Textor*, 711 F.2d at 1392 (quoting *Gemini*, 470 F.Supp. at 564). Courts have used this theory to assert jurisdiction "over [those] whom jurisdiction would otherwise be lacking." *In re Arthur Treacher's Franchisee Litigation*, 92 F.R.D. 398, 411 (E.D. Pa. 1981).

Conspiracy as an independent basis for jurisdiction has been criticized as distracting from the ultimate due process inquiry: whether the out-of-state defendant's contact with the forum was such that it should reasonably anticipate being haled into a court in the forum state. Althouse, *The Use of Conspiracy Theory to Establish in Personam Jurisdiction: A Due Process Analysis,* 52 Fordham L.Rev. 234, 252, (1983). To comport with due process, the exercise of long-arm jurisdiction over a defendant "must rest not on a conceptual device but on a finding that the non-resident, through his relationship with another, has 'purposefully avail[ed him]self of the privilege of conducting activities within the forum State.'" *Id.* at 252 (quoting *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980)). It follows that:

> The relationship may be described in terms of conspiracy, but such a characterization should not mask the real facts of the relationship or avoid analysis of the attribution process. The term "conspiracy" is meaningful only to the extent that it helps to elucidate these facts.

Id. at 252-253. In short, "due process will not permit the plaintiff to use insignificant acts in the forum to assert jurisdiction over all co-conspirators." *Id.* at 246.

Over a decade ago, this Court came to the same conclusion. In *Siskind,* 642 S.W.2d at 436, a parent alleged conspiracy between an Arizona operator of a school and its employees to defraud its students. We held that jurisdiction in Texas was proper as to the operator, but not as to the individual employees:

> [The operator's] solicitation of business in Texas cannot be imputed to the individual Respondents so as to render them amenable to suit in Texas. As *Rush v. Savchuk,* 444 U.S. 320, 100 S.Ct. 571, 62 L.Ed.2d 516 (1980) makes clear, it is contacts of the defendant himself that are determinative.

> *Siskind*, 642 S.W.2d at 437-438. Thus, we decline to recognize the assertion of personal jurisdiction over a nonresident defendant based solely on the effects or consequences of an alleged conspiracy with a resident in the forum state.

There is no claim by Weinberg that Kaplan committed any tortious acts in Texas, that the conspiracy was conceived in Texas, or that either of the Texas defendants (Washington and Collins) was the initiator of the conduct that eventually led to Weinberg's decertification. There is, therefore, no basis for asserting personal jurisdiction over Kaplan because of his alleged involvement in a purported conspiracy:

> "A civil conspiracy is a combination by two or more persons to accomplish either an unlawful purpose or a lawful purpose by unlawful means. *Massey v. Armco Steel Co.*, 652 S.W.2d 932, 934 (Tex. 1980). A civil conspiracy between a resident and nonresident defendant has been recognized by some courts as an independent basis for exercising personal jurisdiction over the nonresident. *Gibson*, 897 S.W.2d at 773: *see also Cherokee Labs., Inc., v. Rotary Drilling Servs., Inc.*, 383 F.2d 97, 103 (5th Cir. 1967), *cert. denied*, 390 U.S. 904, 88, S.Ct. 816, 19 L.Ed.2d 870 (1968) (alleged civil conspiracy was within scope of Texas long-arm statute; due process not addressed). However, the Texas Supreme Court has expressly rejected this approach, holding instead that jurisdiction may be exercised only where a nonresident defendant has purposefully established sufficient minimum contacts to satisfy due process. *Gibson*, 897 S.W.2d at 773." *Vosko v. Chase Manhattan Bank*, 909 S.W.2d 95, 100 (Tex. App. — Houston [14 Dist. 1995]).

> "We also agree with Appellees that use of a theory of civil conspiracy in this context to support personal jurisdiction has been foreclosed. *Nat'l Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769, 773-74 (Tex. 1995) (holding that long-arm jurisdiction cannot be based on conspiracy as a 'conceptual device' to impute conduct of another within the forum to the defendant, but must rest on contacts of the defendant, itself, with the forum state); *Siskind v. Villa Found. For Educ., Inc.*, 642 S.W.2d 434, 436 (Tex. 1982) (holding jurisdiction over non-resident individuals could not be based on conspiracy with corporation); *see also Case*, 31 S.W.3d at 309 (holding acts of co-defendant in Texas held insufficient to confer jurisdiction over non-resident defendants)." *Michel v. Rocket Engineering Corp.*, 45 S.W.3d 658, 671 (Tex. App. — Ft. Worth 2001).

In accord: *Bensusan Rest. Corp. v. King*, 126 F.3d 25, 28-29 (2d. Cir. 1997).

B. Weinberg's attack on the 2003 arbitration award

The claim that Kaplan's decision to uphold the immediacy of Weinberg's revocation was part of this conspiracy (Response, p. 5), is nothing more than an attempted collateral attack on an interim arbitration award that was rendered in 2003. Weinberg's failure to mount an attack on Kaplan's interim award of February 26, 2003, and his final award on September 5, 2003, which reduced Weinberg's three (3) year revocation to an eighteen (18) month suspension, is fatal to his claim of a conspiracy. The procedure for attacking the merits of an arbitration award, pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, is through an attack on the arbitration award itself which must be filed within three (3) months after the award is filed or delivered, 9 U.S.C. § 12. Weinberg, in this proceeding, may not challenge the integrity of the arbitration award and, therefore, may not rely upon the award as evidence of any sort of conspiracy.

C. Kaplan's failure to enforce his subpoena

Weinberg also contends that Kaplan's refusal to enforce his subpoena is evidence of Kaplan's participation in the conspiracy. Enforcement of a subpoena is not Kaplan's responsibility. The Federal Arbitration Act provides the mechanism for enforcing an arbitral subpoena. Section 7 of the FAA authorizes arbitrators to issue subpoenas. It also states that if a person refuses to obey a subpoena, the federal district court is the proper venue for enforcing the subpoena.

D. There is no evidence of a conspiracy

There is no factual basis for claiming that Kaplan was involved in a conspiracy. In *International Elevator Company v. Garcia*, 76 S.W.3d 778 (Tex. App. — Houston [1st Dist.] 2002), the Court stated:

> "Existence of personal jurisdiction is a question of law, but that determination must sometimes be preceded by the resolution of underlying facts." *Id.* at p. 781.

As the record in this case establishes, the "underlying facts" will not support a claim that Kaplan was a member of a conspiracy to decertify Weinberg as an NFLPA Contract Advisor. Weinberg's Amended Petition and Brief in Response to Kaplan's Motion to Dismiss are replete with reckless generalities and opinions about the existence of a diabolical conspiracy, Kaplan's participation in it, and the attribution of the acts of the conspirators to Kaplan. The Response filed by Weinberg, as detailed above, establishes just the opposite. The record before this Court contains no evidence that Kaplan ever refused to schedule a hearing in any case in which Weinberg was involved. The evidence presented by Kaplan in his Supplemental Affidavit and its attachments (Kaplan's App. 53-80) confirms that Kaplan was attempting to schedule hearings, but was advised by Weinberg's counsel, first Michael Kirshon, later Alan Strasser, not to schedule hearings (Kaplan's App. 74). Furthermore, there is no evidence that this alleged conspiracy, even if it existed, was conceived in Texas, executed in Texas, or that Texas would have more interest than any other forum in righting alleged wrongs perpetrated by the conspirators. Aside from Washington and Collins, who seem to have been dragged into the lawsuit as a means of obtaining jurisdiction in Texas, the alleged acts of the purported co-conspirators occurred outside this state. Weinberg cannot rely upon the conspiratorial activities of the NFLPA and its officers, directors, and counsel (Berthelsen, Upshaw, DePaso, Armstrong, Agnone, Shatsky, and Levin) as a basis for the assertion of jurisdiction over Kaplan:

> "International Elevator contends Texas has specifically rejected the argument that a non-resident's contacts may be imputed to another non-resident to support personal jurisdiction. . . We agree." *International Elevator Company v. Garcia, supra,* at p. 783.

For specific jurisdiction to attach to a non-resident, it must be shown that that the non-resident purposely availed himself of the privilege of conducting activities within Texas:

> "The purposeful availment requirement ensures that nonresident defendant's contact results from its own purposeful activities and not the unilateral activity of the plaintiff or a third party." *Experimental Aircraft Association, Inc. v. Dopter,* 76 S.W.3d 496 (Tex. App. — Houston [14th Dist.] 2002).

In *Michel v. Rocket Engineering Corp., et al.*, 45 S.W.3d 658 (Tex. App. — Ft. Worth 2001), the Plaintiffs brought suit in Texas against non-resident Defendants alleging as a basis for jurisdiction, among other factors, that the Defendants were members of a civil conspiracy which caused injury to the Plaintiffs. The Court first observed that whether personal jurisdiction existed is a question of law, but that determination of the issue might be dependent upon resolution of underlying factual disputes. *Id.* at p. 667. The Court then analyzed the facts presented on the record with respect to the conspiracy allegations, and concluded that the Defendants' assertion of a civil conspiracy was negated by ample evidence. *Id.* at p. 670. That is precisely the case here: Although Weinberg, with a broad brush, paints a picture of a conspiracy to defraud him of his livelihood, and makes a number of allegations regarding Kaplan's participation in that conspiracy, he offers no facts to this Court to support those allegations. What facts he offers, as reflected in his Declaration and the attachments thereto, establish that Kaplan was scheduling hearings on cases that had been referred to him and was, in fact, cooperating with Weinberg by furnishing him information relating to other cases of Weinberg's which had not been referred to Kaplan for hearing (Plaintiff's App. 28). Finally, all that Weinberg has to say about Kaplan's involvement in this conspiracy is that he "believes" Kaplan did not set hearings at the instructions of the NFLPA or its representatives:

> "I believe this was because Kaplan was acting on specific instructions from the NFLPA when he refused to schedule my grievances and refused to provide me with information on my

> players' grievances. *See*, correspondence to and from me, Kaplan, and Tom DePaso, attached herein as Exhibit '3' and incorporated herein by reference." (Plaintiff's App. 3).

The "Exhibit 3" documents are the correspondence discussed above which clearly prove that Kaplan was not a member of any alleged conspiracy (Plaintiff's App. 21-29). There is a conflict between what Weinberg alleges in his Declaration and the evidence contained in these exhibits which clearly destroys the notion that Kaplan was a party to any conspiracy or that any conspiracy existed.

Weinberg's belief, of course, is not a fact upon which this Court may find that a conspiracy exists, and there are no other facts offered by Weinberg. Kaplan denies the existence of a conspiracy, denies that he ever failed or refused to schedule a hearing in any case in which Weinberg was interested, and has offered substantial documentary evidence in support of his assertions. In this case, as in *Michel*, there is ample evidence negating the existence of a conspiracy, or at least Kaplan's participation in that conspiracy, and jurisdiction cannot be sustained on that basis.

WHEREFORE, Defendant Roger P. Kaplan prays that his Motion to Dismiss be granted, that he be dismissed from this case, and that he be awarded his costs and attorneys' fees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of March 2007, true and correct copies of the foregoing *Reply of Roger Kaplan* were served by certified mail, return receipt requested and the Court's Notice of Electronic Filing system, upon counsel for Plaintiff, Lawrence J. Friedman and Bart Higgins, FRIEDMAN & FEIGER, LLP, 5301 Spring Valley Road, Suite 200, Dallas, TX 75254 and counsel for Defendants, David Greenspan, DEWEY BALLANTINE, LLP, 1301 Avenue of the Americas, New York,, NY 10019-6092 and Ralph Miller, WEIL, GOTSHAL & MANGES LLP, 200 Crescent Court, Suite 300, Dallas, TX 75201.

/s/ Allen Butler
Allen Butler